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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No. 1376 OF 1999
IN
SUIT No. 3712 OF 1994

The Municipal Corporation
of Brihan Mumbai & Ors. ... Appellants

Vs.

Mrs.Yakuobeth w/o.
Jermiah David & Ors. ... Respondents

Mr. A. Y. Sakhare, Sr. Advocate with Mr. K. N. Gaikwad, Advocate for Appellant.

None for the Respondents.

CORAM : R. M. S. KHANDEPARKAR
AND
D. G. KARNIK, JJ.

DATE : JUNE 7, 2007.

PC :-

. Heard the learned counsel for the appellants. None present for the respondents.

2. This appeal arises from the order dated 27th October 1999 passed in Sut No. 712 of 1994. The impugned order apparently has been passed in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure. Though there is no specific reference to the provisions of law in the impugned order, it is apparent that the suit has been decreed on the

ground of failure on the part of the appellant/defendant to file the written statement. The plaintiff was thereupon directed to lead evidence and produce the documents, if any. The order refers to production of 14 documents and further records that "in view of the pleadings contained in the plaint and the documents, the suit has been decreed." Apparently, the learned Single Judge has not ascertained whether the facts pleaded in the plaint and the contents of the documents are sufficient to prove the case of the plaintiff in order to entitle them to get the decree in terms of the prayers in the plaint. The learned Court also did not follow the procedure under the provisions of law for production of documents on record as well as for disposal of the suit in the absence of written statement filed by the defendant. Obviously therefore, impugned order cannot be sustained.

3. This Court in number of decisions has held that the matter can be disposed of in exercise of powers under Order VIII, Rule 10 by passing a judgment but such a judgment has to satisfy the requirements of section 2(9) of the

Code of Civil Procedure. A reference can be made to the following decisions-

(i) **Balraj Taneja & Anr. Vs. Sunil Madan & Anr.,** reported in **(1999) 8 SCC 396.**

(ii) **All Indian Central Bank Employees Congress, a trade Union & Ors. Vs. Central Bank of India**, reported in **2007(3) AIR Bom. R. 214.**

Unreported decision in :

(iii) Municipal Corporation of Greater Mumbai & Ors. Vs. Azharali Anwarali Sambhalwala, delivered on 30-3-2007 in Appeal No. 152 of 2007 in Suit No.2302 of 1992.

(iv) Pravinkumar Khimji Vs. Hansa Kantilal alias Kalpana Kantilal & Ors., delivered on 20-4-2007 in Appeal No. 761 of 1999 in Suit No. 3423 of 1991.

(v) M/s. Sangatarash International &

Ors. Vs. Daulatram Chelaram Bakhru, delivered on 3rd May 2007 in Appeal (Lodging) No. 178 of 2007 in Suit No. 1022 of 1984.

4) For the reasons stated above, therefore the impugned order cannot be sustained and is liable to be set aside and the matter is remanded to the learned Single Judge to deal with the matter in accordance with the provisions of law, bearing in mind the observations in the decisions referred above. Liberty to the appellant to move before the learned Single Judge for filing written statement, if they so desire.

5) The amount already deposited in terms of order passed at the time of admission shall remain invested and shall be subject to the order to be passed in Suit No. 3712 of 1994 in that regard. There shall be no order as to costs.

Sd/- Sd/-

[D. G. KARNIK, J.] [R.M.S. KHANDEPARKAR, J.]